# STATE OF MICHIGAN

# COURT OF APPEALS

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ARIEL PEREZ, SR., Personal Representative of the Estate of Ariel E. Perez, Jr., Deceased,

Plaintiff-Appellee/Cross-Appellant,

v

OAKLAND COUNTY, a Michigan Municipal Corporation, and ROBERTA RICE,

Defendants-Appellants/Cross-Appellees,

and

DR. SARATH HEMACHANDRA,

Defendant.

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UNPUBLISHED
March 27, 2007

No. 271406
Oakland Circuit Court
LC No. 2005-065925-NM

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendants, Oakland County and Roberta Rice[1] appeal as of right the trial court's order denying their motion for summary disposition pursuant to MCR 2.116(C)(7) and (8) in this wrongful death lawsuit. On cross-appeal, plaintiff challenges the trial court's order disallowing his claim for hedonic damages. Because we conclude that defendants were entitled to summary disposition on the basis of governmental immunity, we reverse the order denying defendants' motion and decline to address plaintiff's cross-appeal because it is moot.

This action arises from the death of plaintiff's decedent, Ariel E. Perez, Jr., who committed suicide while confined in single cell at the Oakland County jail. At issue on direct appeal is whether defend

[1] Defendant, Dr. Sarath Hemachandra, a psychiatrist, is no longer participating in this litigation, and is not a party to this appeal.

ant county, and defendant Rice, a law enforcement employee involved in Perez's confinement, are entitled to summary disposition on the basis of governmental immunity, MCL 691.1407(1) and (2).

This Court reviews de novo the trial court's decision on a motion for summary disposition based on governmental immunity pursuant to MCR 2.116(C)(7). *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2006). To survive a motion raised under MCR 2.116(C)(7), the plaintiff must allege specific facts warranting the application of an exception to governmental immunity. *Renny v Dep't of Transportation*, 270 Mich App 318, 322; 716 NW2d 1 (2006). Under MCR 2.116(C)(7), unless the contents of plaintiff's complaint are contradicted by documentary evidence submitted by the moving party, the trial court must accept them as true. *Davis, supra*. The trial court may consider the parties' pleadings, affidavits, depositions, admissions, and other documentary evidence filed to determine whether a plaintiff's suit is barred by governmental immunity. *Renny, supra* at 321.

Governmental immunity is addressed by the government tort liability act (GTLA), which states:

> (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. [MCL 691.1407(1).]

The exceptions provided in the act are the highway exception, MCL 691.1402, the motor vehicle exception, MCL 691.1405, the public building exception, MCL 691.1406, the proprietary function exception, MCL 691.1413, and the governmental hospital exception, MCL 691.1407(4).

The only other tort claims that will survive a grant of immunity are "those that arise from the exercise or discharge of a nongovernmental function." *Tate v City of Grand Rapids*, 256 Mich App 656, 659; 671 NW2d 84 (2003). A governmental function is an activity that is "expressly or impliedly mandated or authorized by constitution, statute, or other law." *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984); MCL 691.1401(f). MCL 691.1407(2) provides individual immunity for governmental employees under certain circumstances. The statute states, in part:

> Except as otherwise provided in this section, . . . each officer and employee of a governmental agency . . . is immune from tort liability for an injury to a person . . . caused by the officer, employee . . . while acting on behalf of a governmental agency if all of the following are met:
>
> (a) The officer, employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage. [MCL 691.1407(2); *Cooper v Washtenaw County*, 270 Mich App 506, 508; 715 NW2d 908 (2006).]

Employees of a governmental agency acting within the scope of their authority and in furtherance of a governmental function are immune from tort liability unless their conduct constitutes gross negligence that is the proximate cause of the injury. MCL 691.1407(2); *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000). Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a); *Xu v Gay*, 257 Mich App 263, 269; 668 NW2d 166 (2003). The issue of gross negligence may be determined by summary disposition only where reasonable minds could not differ. *Jackson v Saginaw County*, 458 Mich 141, 146-147; 580 NW2d 870 (1998). Proximate cause is satisfied where gross negligence is the one most efficient and direct cause preceding the injury. *Rakowski v Sarb*, 269 Mich App 619, 636; 713 NW2d 787 (2006).

Plaintiff argues that there is sufficient evidence that defendant Rice's conduct amounts to gross negligence and that there is sufficient evidence that defendant Rice's conduct is "the" proximate cause of plaintiff's decedent's death. Plaintiff specifically asserts that defendant Rice was grossly negligent when she cleared plaintiff's decedent for single cell housing without special watch and without regard for his serious mental illness, past conduct, and jail policy. Plaintiff provides that defendant Rice's "placement of [plaintiff's decedent], a seriously mentally ill inmate who was not receiving treatment, in a single cell without any watch constituted 'the' proximate cause of [plaintiff's decedent's] ultimate death," essentially because the suicide was foreseeable under the circumstances.

The operation and maintenance of a jail constitutes a governmental function for which a governmental agency is generally immune from suit. *Jackson v County of Saginaw*, 458 Mich 141, 148; 580 NW2d 870 (1998). Thus, pursuant to MCL 691.1407(2)(c), defendant Rice's conduct must have been "the proximate cause of the injury" in order to proceed on an allegation of gross negligence. "The phrase 'the proximate cause' within subdivision (c) 'is best understood as meaning the one most immediate, efficient, and direct cause preceding an injury.'" *Cooper, supra* at 509, quoting *Robinson v Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). Our Court recently explicitly discussed the concept of proximate cause in *Cooper, supra*, a case involving inmate suicide. *Cooper, supra* at 508-511. After reviewing applicable case law, the *Cooper* Court observed that:

> There is no discussion of intervening causation or foreseeability in these cases and no indication that the cause that is the most immediate, efficient, and direct cause preceding an injury may not be deemed 'the proximate cause' for purposes of MCL 691.1407(2) if it was foreseeable to the governmental actors. [*Id.*, at 510.]

The *Cooper* Court ultimately held that the alleged conduct of the governmental actors was not the proximate cause of the inmate's death and held that the defendants were immune from tort liability pursuant to MCL 691.1407(2). *Id*., at 510-511. Applying *Cooper* to the facts requires the determination that regardless of her behavior, Rice's conduct cannot be deemed "the" proximate cause of plaintiff's decedent's death when, even if foreseeable, it was not the "most immediate, efficient, and direct cause preceding" the injury. *Id*.

Plaintiff has alleged errors on cross-appeal. Because our resolution of the foregoing renders the issues moot, we decline to address the merits of plaintiff's cross-appeal regarding

hedonic damages. *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 139; 393 NW2d 161 (1986).

Reversed.

/s/ David H. Sawyer
/s/ Pat M. Donofrio